

NO.:

TWELFTH DISTRICT

SUPREME COURT OF NORTH CAROLINA

)	<u>From Cumberland County</u>
)	No. COA06-158
IN THE MATTER OF)	
)	
M.C. & R.C.)	
)	
)	
)	
)	

RESPONSE TO PETITION FOR DISCRETIONARY REVIEW UNDER § 7A-31

TO THE HONORABLE SUPREME COURT OF NORTH CAROLINA:

Pursuant to N.C.R. App. P. 15(d), Respondent Guardian *ad Litem* hereby responds to the Petition for Discretionary Review under N.C. Gen. Stat. § 7A-31 and Appellate Rule 15 filed by Petitioner Ray C. (“Petition”).¹

PROCEDURAL BACKGROUND

This Petition concerns the termination of the parental rights of Petitioner, the father of minor children R.C. and M.C. In April 2002, the minor children were

¹ As the Guardian *ad Litem* interprets N.C.R. App. P. 15(d), it may submit a brief response explaining why it is not necessary for the Court to grant the Petition. Thus, the Guardian *ad Litem* has intentionally focused this response on the reasons why the Court should deny the Petition. The Guardian *ad Litem*’s failure to respond to any particular factual statements or legal arguments by Petitioner should not be construed as the Guardian *ad Litem*’s agreement that those factual statements or legal arguments are correct.

removed from the home based on allegations of abuse and neglect by Petitioner and the children's mother, Lynda C. (R pp. 24-29) Over the next eight months, the trial court held almost monthly review hearings to consider whether the children should remain in DSS custody. (R pp. 30-58)

In January 2003, the trial court held hearings on the abuse and neglect allegations, and determined that both children had been abused and neglected and should remain in DSS custody. (R pp. 59-68) The trial court further ordered Petitioner and Lynda C. to enroll and complete domestic violence counseling, anger management counseling, and marital counseling. (R p. 67) Petitioner and Lynda C. also were to obtain a parenting assessment and complete a parenting skills training session, as well as work with DSS to develop a case management plan. (*Id.*) Petitioner also was to obtain a substance abuse assessment and follow through with any recommended treatment and counseling. (*Id.*) Petitioner and Lynda C. appealed the order.

On 8 April 2004, DSS petitioned the trial court to terminate Petitioner and Lynda C.'s parental rights. (R pp. 3-8) Due to their pending appeal of the abuse and neglect determination, the matter was stayed. (T, Vol. I, p. 9) In September 2004, the Court of Appeals upheld the determination that the minor children had been abused and neglected. (R pp. 114-132) The judgment of the Court of

Appeals was entered on 11 October 2004, and a hearing on the termination was set for 23 November 2004, but was continued. (R pp. 19, 113) Over the next seven months, various delays and requests for continuance, including a request for a guardian *ad litem* for Lynda C. caused the matter to be rescheduled. (T, Vol. I, pp. 4-5)

The petition for termination of parental rights ultimately was heard during a special session on 16, 17, and 20 June 2005. (R p. 22) On 1 July 2005, the trial court entered an order terminating Petitioner and Lynda C.'s parental rights. (R pp. 219-222)

Petitioner appealed the decision on 24 June 2005. (R p. 225) Lynda C. filed her appeal on 27 June 2005. (R p. 226) On 3 October 2006, the Court of Appeals filed its unanimous and unpublished decision in the matter upholding the decision of the trial court and terminating Petitioner and Lynda C.'s parental rights.

On 23 October 2006, Petitioner timely filed this Petition.

REASONS WHY CERTIFICATION SHOULD NOT ISSUE

I. THIS CASE DOES NOT INVOLVE LEGAL PRINCIPLES OF MAJOR SIGNIFICANCE TO THE JURISPRUDENCE OF THE STATE.

Discretionary review of a Court of Appeals' decision may be had when in the opinion of the Supreme Court:

- (1) The subject matter of the appeal has significant public interest, or
- (2) The cause involves legal principles of major significance to the jurisprudence of the State, or
- (3) The decision of the Court of Appeals appears likely to be in conflict with a decision of the Supreme Court.

N.C. Gen. Stat. § 7A-31(c).

Petitioner contends that this appeal “involves legal principles of major significance to the jurisprudence of the State.” He makes no argument regarding either of the other two standards.

Significantly, Petitioner makes no argument to support his contention that the legal principles involved in this appeal are of “major significance to the jurisprudence of the State.” Clearly, this is a high bar, and Petitioner has not come close to meeting this rigorous standard.

Petitioner does not suggest that the Court of Appeals created a new legal principle or that the Court of Appeals failed to recognize a significant principle on

this issue. In fact, Petitioner admits that the Court of Appeals “relied on the correct law.” Petitioner merely asserts that the Court of Appeals misapplied the law, presumably because Petitioner did not agree with the decision. However, the Court of Appeals thoroughly analyzed the issues and appropriately applied the law. Moreover, assuming *arguendo* that such a misapplication occurred, this still does address the question of whether a legal principle of “major significance to the jurisprudence of the State” was affected. No such legal principles are implicated in this appeal.

This matter involves the termination of parental rights, and North Carolina courts have routinely dealt with such actions. See e.g. In re T.L.B., 167 N.C. App. 298, 605 S.E.2d 249 (2004); In re Blackburn, 142 N.C. App. 607, 543 S.E.2d 906 (2001); In re Nesbitt, 147 N.C. App. 349, 555 S.E.2d 659 (2001); In re Parker, 90 N.C. App. 423, 368 S.E.2d 879 (1988); In re Dinsmore, 36 N.C. App. 720, 245 S.E.2d 386 (1986); In re Ballard, 311 N.C. 708, 319 S.E.2d 227 (1984). The guiding legal principles, including those raised by Petitioner, have been thoroughly developed and are well settled. See e.g. In re S.W., 173 N.C. App. 1, 625 S.E.2d 594, 596 (2006) (failure to comply with timeliness requirements does not require reversal unless the mother is prejudiced); In re J.L.K., 165 N.C. App. 311, 317, 598

S.E.2d 387, 391, disc. review den'd, 359 N.C. 68, 604 S.E.2d 314 (2004) (termination of parental rights is reviewed on an abuse of discretion standard).

Importantly, the Court of Appeals recognized that its decision in this appeal did not affect such significant legal principles, as the Court of Appeals made the determination that the decision should not be published. “If the panel that hears the case determines that the appeal involves no new legal principles and that an opinion, if published would have no value as precedent, it may direct that no opinion be published.” N.C. R. App. P. 30(e)(1) (emphasis added).

In sum, this matter does not involve legal principles of major significance to the jurisprudence of this State, and the Petition should be denied.

II. THIS CASE DOES NOT MEET ANY OF THE OTHER CRITERIA FOR PETITIONING FOR DISCRETIONARY REVIEW.

Petitioner has not raised, nor does the case meet, any of the other criteria to support a petition for discretionary review. Under N.C. Gen. Stat. § 7A-31(c), discretionary review also may be permitted when “[t]he subject matter of the appeal has significant public interest” or when “[t]he decision of the Court of Appeals appears likely to be in conflict with a decision of the Supreme Court.” The decision in this matter does not meet either criterion.

The decision is not a matter of significant public interest. The decision does not raise any constitutional issues, change public policy, or create new standards of

law. Further, the decision is in line with other opinions by both this Court and the Court of Appeals. The application of law to the unique facts of this case only affects those directly involved and not the public as a whole.

As such, the Petition should be denied.

CONCLUSION

Petitioner has failed to establish the essential elements of a petition for discretionary review under N.C. Gen. Stat. § 7A-31. Accordingly, the Petition for Discretionary Review should be denied.

Respectfully submitted this the 2nd day of November, 2006.

NELSON MULLINS RILEY &
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ATTORNEYS FOR NORTH CAROLINA
GUARDIAN ad LITEM

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the foregoing Response to Petition for Discretionary Review Under § 7A-31 was served on the persons indicated below by placing a copy thereof in the United States Mail, postage prepaid, addressed as follows:

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This the 2nd day of November, 2006.

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